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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 49

JOSE SORIANO, *Petitioner*,

v.

THE UNITED STATES, *Respondent*.

On Writ of Certiorari to the United States Court of Claims

REPLY BRIEF FOR THE PETITIONER

Question Presented

The respondent has left out elements of the question of such importance that it can be said that the question as presented by respondent is not correctly stated.

The question involved, divided into its two component parts, is (1) whether the Filipinos comprising the Philippine Army, (a) inducted into the United States Armed Forces, Far East, in 1941, by Military Order of President Roosevelt, as Commander-in-Chief of the Army and Navy of the United

States, and by the implementing orders of Douglas MacArthur, Commander-in-Chief of USAFFE, (b) who, after the surrender of General Wainwright, in 1942, conducted military operations as organized guerrillas against Japan, in accordance with the express and implied authority and orders of General MacArthur, from 1942 to 1944, and (c) who were subsequently retroactively recognized by the President of the Commonwealth of the Philippines as authorized elements of the Philippine Army, and *again* by General MacArthur as authorized elements of USAFFE, were a part of the armed forces of the United States, i.e., American soldiers; and (2) if so, as established by petitioner, whether such American soldiers, the authorized, organized, recognized guerrillas, had the right to requisition food and supplies to carry on their military operations in the name and for the account of the United States armed forces and thereby create a debt of the United States for which the United States is liable.

As the question is stated by the respondent, there has been omitted therefrom the recognition of the authorized, organized recognized guerrilla forces by General MacArthur during the period 1942-1944, when the requisitions were made. Also, respondent has begged the question, again saying that the Filipinos fought *with* the United States military forces and not *in* the United States Army Forces, Far East, the term used in the Military Orders of their induction.

Respondent in its brief has reversed the order of petitioner's argument and has first dealt with the question of the *right and power* to requisition, before going into the question of the *capacity* in which the requisitioning officers acted. Perhaps this was done because respondent did not wish to discuss the right of an American officer, in occupied territory in the midst of war, to requisition food and supplies, for the military operation of his American soldiers, since respondent has hardly touched upon this point, the reply to petitioner's argument on this question having been relegated to a mere footnote. (Resp. Br. pp. 46-47.)

Respondent's Brief Summarized

I

No one can bind the United States in procurement matters, unless he has been expressly or impliedly authorized to do so by the United States. There is no allegation that the guerrillas were authorized officers of the United States, and even had they been agents, they could not have bound the United States without express or implied authorization.

II

The petition contains no factual allegation of any express authority, and no express authority in fact existed, from the United States, for the guerrillas to contract upon its behalf.

III

The "arrangements" between the United States and the Commonwealth of the Philippines, or the Philippine Army, were not such as to confer, by implication, authority upon the Philippine Army, or the Filipino officers, to requisition supplies for the account of the United States.

(a) Reference is made to the "autonomy" given to the Commonwealth of the Philippines under the Philippine Independence Act and to an analysis of its relations with the United States from 1934 to 1946, to establish that the Philippine Army did not become a part of the armed forces of the United States.

(b) It is argued that the Army of the Philippines was not "merged" into the armed forces of the United States.

(c) It is urged that the benefits given by the Congress of the United States to Filipino soldiers, which are treated as insignificant, did not change the *status* of the Philippine Army with respect to the United States armed forces.

(d) Considerable emphasis in respondent's argument is laid upon the separate appropriations by Congress to pay for the Philippine Army and the disbursement of such funds by

the Philippine Government, under only the supervising authority of General MacArthur.

IV

It is suggested to this Court that the Court abdicate its power of judicial review—in fact, in essence, deny the Petition for the Writ of Certiorati which it has granted—for the sole reason that the Executive branch is settling, on a "political" basis, the thousands of claims which still exist between the United States and the Philippines, both contractual and otherwise.

These arguments, as well as the question of the right of an officer in the armed forces of the United States, *in time of war*, on territory occupied by the enemy, to requisition food and supplies, needed for military operations, will be considered seriatim.[1]

Petioner's Reply

I

Requisitions under Emergency Conditions—War

Petitioner concedes freely that, generally speaking, the United States can be held liable only on contracts made by officers acting under valid authority. It is even admitted that there must be express or implied authority for an officer, or agent, to bind the United States upon a contract, even in time of war, unless there is an emergency. These are well recognized general rules.

Petitioner has urged that this general rule does not apply in the presence of the Hague Conventions, the Rules of Land Warfare, the surrender of General Wainwright, and the orders of General MacArthur, as Commander-in-Chief, and of officers acting under his orders, insofar as are concerned the military operations of the organized guerrillas in the Philippines, during 1942 to 1944.

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[1] Appendices A to E follow the petition for Writ of Certiorari, pp. 1-A to 25-A; Appendices F to CC follow Petioner's Brief, pp. 1-B to 83-B; Appendices DD to JJ follow Petioner's Reply Brief, pp. 1-C to 36-C.

Respondent has admitted that it may be contended that military necessity gave the guerrillas authority which they did not otherwise have to deal with "emergency conditions", citing *Mitchell v. Harmony*, 13 How. 115, 133, *United States v. Caltex*, 344 U. S. 149, 153. However, this admission is qualified by the assertion that a French soldier could not bind the United States, despite the existence of an emergency, and that the petition makes no allegations of "emergency conditions" such as to bring the claim within the rule of *Mitchell v. Harmony* (Resp. Br., pp. 43-44).

In the first place, we are dealing with an American national, an alien for very limited purposes, inducted into our armed forces, an American soldier, acting under orders of General MacArthur—not a French soldier—matters to be discussed further below.

In the second place, in view of the allegations of the petition respecting the military orders involved, the surrender, and the guerrilla warfare which led to the requisitions, it seems hardly necessary to have alleged that "emergency conditions" existed. The events of which this Court must take judicial notice establish nothing but the existence of "emergency conditions."

(1) The Military Order of President Roosevelt, as Commander-in-Chief of the Army and Navy of the United States, of July 26, 1941, inducting the Philippine Army into the armed forces of the United States, is predicated upon the "existing emergency". (Pet. for Writ, App. B, p. 10a.)

(2) War, in itself, is an emergency. Japan committed acts of war against the United States on December 6-7, 1941, and Congress, by joint resolution, declared a state of war to exist December 8, 1941. (Pet. Br., App. J, p. 7b.)

(3) The Japanese attack on Pearl Harbor, and on Clark Field in the Philippines, destroying a substantial part of the fleet upon which General MacArthur had depended, and the effective power of our Philippine Air Force, called the worst defeats in our military and naval history, created an

"emergency" for USAFFE in the Philippines from which it never recovered and ended in the surrender of the United States armed forces in the Philippines. (App. II, p. 34c.)

(4) The failure to surrender the troops which were not at Bataan or Corregidor, which became the nucleus of the organized guerrillas, created imponderable "emergency conditions" for the guerrilla warfare which General MacArthur had ordered prior to his departure from the Philippines, and which was authorized and recognized by him from Australia all during the period with which we are concerned, 1942-1944. (Pet. Br. App. S, pp. 33b-52b, App. U, pp. 61b-68b, and App. EE, to GG, pp. 2c-29c.)

(5) The "emergency conditions" existed until the return of General MacArthur to the Philippines in 1944 and the surrender of Japan in September, 1945. (Pet. Br., App. S, pp. 35b-52b.)

The requisitions involved in this case were made under "emergency conditions".

II

Military Operations in the Philippines—World War II

The operations of the armed forces of the United States in the Philippines have to be divided into three periods in order to get a clear picture of the subject case. They are confused in respondent's Brief, particularly when reference is made to the number of claims filed, disposed of, or pending against the United States and amounts already expended by the United States to alleviate the hardships and financial situation in the Philippines. (Resp. Br., pp. 44-46.)

The three periods are—

(a) *The period from July 26, 1941, until the surrender of Corregidor in May, 1942.*

That period has been completely covered by Petitioner's Brief, pp. 11 to 19, which is amply supported by contemporaneous documents and by Morton's history, *The Fall of the*

Philippines, published by the Department of the Army,[1] showing that the Philippine Army was *inducted* into the armed forces of the United States and was just as much a part of the armed forces of the United States, from July 1941 to May 1942, as were the Marines and the naval units under General MacArthur's Command. (Pet. Br. App. S, p. 48b.)

On December 4, 1941, Colonel Samuel L. Howard, Commander of the Fourth Marines, was in Manila with his regiment, and Admiral Hart turned the regiment over to the Army "for tactical employment". Within a week the entire regiment had reached Corregidor, and on December 29 Colonel Howard was made commanding officer of the beach defenses. (Morton, p. 528.)

The Marines had their own uniform, their own insignia, their own weapons, their own officers, their own scale of pay, and their own paymasters. They were not part of the Army of the United States as defined by Congress, but they were part of the United States Army Forces, Far East, under General MacArthur and General Sutherland, from whom they received their orders. (Morton, p. 528.) The Philippine Army was no different. The Philippine Army could well be, and has been, called the "Philippine Section, United States Army Forces, Far East". (App. GG, p. 27c.)

A very minor part of the requisitions with which we are concerned were made during this period. The primary purpose of this part of the Brief for the Petitioner was to show the origin of the troops—Army, Navy, Marines, and the Philippine Army, USAFFE—which later became the nucleus of the organized guerrilla movement, and the "organized guerrillas" in the Philippines, and their status as American soldiers in 1941-1942. Had either the Marines or these

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[1] Hereinafter, when reference is made to Morton's *The Fall of the Philippines*, the citation will be abbreviated to Morton, followed by page number; and when reference is made to Cannon's *Leyte: The Return to the Philippines*, also published by the Department of the Army, the citation will be abbreviated to Cannon, followed by the page number.

Filipino-American soldiers made the important requisitions involved, during this period, (1941-1942), they could and would have obligated the United States as to them, just as they did with respect to the few requisitions that they did make in this period.

(b) *The period from the surrender of General Wainwright until the return of General MacArthur at the end of 1944, and, in fact, until early 1945.*

This is the period during which the organized recognized guerrillas made the principal requisitions of food and supplies from petitioner, to carry on military operations, upon which this suit is based.

Respondent suggests that there was neither express nor implied authority to bind the United States on the part of these guerrillas during this period. Petitioner urges that there were both.

To dispose of petitioner's principal argument respecting the right of an American officer to requisition *in time of War*, the very essence of this suit, in a mere footnote, suggests inability to answer the argument made by petitioner. Because petitioner's argument is so treated, and because of the perfunctory manner in which the respondent has answered, the pertinent part of respondent's footnote follows, in full. It will then be taken up in its three component parts:

> "Petitioner has suggested that the guerrillas here involved received authority by virtue of the Military Requisition Act of 1941 (55 Stat. 742) (Pet. Br. 37-43), under the Hague Conventions and principles of international law (Pet. Br. 34-35, App. pp. 81b-83b), and under the Rules of Land Warfare (Pet. Br. 35-36). None of these appears to merit extended discussion. The Military Requisition Act of 1941 authorized the President under certain circumstances to requisition personal property. The regulations issued by the President under that statute required advance approval and other procedural steps which would preclude its being applicable to guerrilla procurement. See 8 Fed. Reg. 12068. The Hague Conventions and the principles of international law re-

ferred to by petitioner have no bearing on the case since they deal with rights as between governments. No one disputes the fact that the United States had the right to take property in the Philippines for a public purpose. This right was expressly reserved in the Independence Act and in the ordinance to the Philippine Constitution. App. C, *infra*, pp. 85-86. The question is whether the various transactions in the Philippines among Filipinos were authorized takings by the United States Government. International authorities and conventions do not deal with the subject of delegating authority from the United States to particular individuals. The Rules of Land Warfare, referred to by petitioner, is an Army Field Manual which explains the Hague Conventions and the rules of international law. It is not an operative command or order. It does not delegate authority from the government to any one."

(i) *The Military Requisition Act*—Thus, it is urged that since the Military Requisition Act of 1941 required advance approval and other procedural steps, this would preclude its being applicable to guerrilla procurement.

Considering the chaos in the Philippines following the surrender, when it was impossible to get word either to the United States or to General MacArthur in Australia for months, (Cannon, p. 16), this is a most extraordinary position. The notion that the various United States Army Generals, Colonels, Majors, and Captains *could* have cabled the War Department for authority to requisition, in the presence of existing conditions, or *would* have done so, in the presence of the Rules of Land Warfare and the Hague Conventions under which they had authority to act, mentioned below, is simply fantastic.

Of course, the regulations requiring prior approval and the taking of procedural steps, before the statute was applied in the United States, where, as involved as conditions were, they were not "emergency" and time could be taken, but when a band of a thousand or two thousand or more men, in the midst of military operations, had run out of food and

supplies, that they could be expected to cable the United States or General MacArthur for authority to get some by requisition is beyond belief, regulations notwithstanding. Furthermore, the organized guerrillas had the authority of General MacArthur to fight as guerrillas, which gave them the right to requisition, as respondent well knows. (Morton, Pet. Br. App. S., pp. 34a to 48b; App. EE and FF, pp. 2c to 17c, *infra*.)

General King surrendered Bataan contrary to the orders of General Wainwright, Commander-in-Chief of USAFIL; General Wainwright surrendered Corregidor contrary to the orders of General MacArthur, Commander-in-Chief of the Southwest Pacific Area, but under the general authority of President Roosevelt, Commander-in-Chief of the Army and Navy of the United States. Were they required to follow Army regulations or to get prior authority to make the surrenders effective? (App. II, pp. 34c to 35c.)

(ii) *The Hague Conventions*—"The Hague Conventions and the principles of international law referred to by petitioner have no bearing on the case since they deal with rights as between governments."

Apparently the purpose and nature of the Hague Conventions were not made clear to respondent. They do not purport to delegate authority of any sort to anyone. They are an agreement between Nations as to what the armies of so-called "civilized nations" at war have the right to do, in conducting land warfare on occupied territory without violating the law of Nations. In the Hague Conventions referred to, the signatory Nations gave to one another the power and right to requisition in time of war on the territory of the other, i.e., give the troops of that Nation this *right*. Each signatory Nation gave up a part of its *de facto* sovereignty, so to speak, and admitted that, in operations of war, the troops of the other could as a matter of right, requisition food and supplies of the civilian population and could pay therefor immediately, or obligate the requisition-

ing Nation to compensate therefor at a later date. The existence of these Conventions is necessary to the prosecution of a successful war with the least harm to the civilian population, in a spirit of fairness, and is essential as a charter for the warring powers, so that they may provide their needs and at the same time lay down implementing rules for their fighting armies.

The Hague Conventions admittedly are an agreement between Nations. They do, however, have a bearing on this case, notwithstanding, because they permit a signatory Nation to exercise the *right* of its Army to requisition on occupied territory, in time of War, without being in violation of international law. To exercise this right, the United States Army adopted Rules of Land Warfare, for the guidance of our troops in occupied territory, in time of war.

(iii) *The Rules of Land Warfare*—"The Rules of Land Warfare, referred to by petitioner, is an Army Field Manual which explains the Hague Conventions and the rules of international law. It is not an operative command or order. It does not delegate authority from the government to any one."

Without knowing what is meant by "an operative command or order" or "delegation of authority", or why such a command or power should be in the Army Field Manual, and admitting that they are neither of these, let us call them just "Rules of Land Warfare to guide our Army," which is what they are. What is their purpose?

The Rules of Land Warfare authorize an officer of the United States Army, carrying on military operations in a foreign country, including territory occupied by the enemy, to requisition private property for military operations, and to bind the United States to compensate therefor, if he is unable to pay immediately. If a civilian should refuse, unquestionably the requisitioning officer has the right to take his requirements by force of arms in his foraging operations. (Resp. Br. pp. 60-61.)

It can be asserted, without fear of possible contradiction, that the Rules of Land Warfare (1) gave General MacArthur full authority and power to requisition trucks and buses to carry troops, as he did, gave to the officers under General MacArthur full authority to requisition food and supplies prior to the surrender of Corregidor, which they did, (2) gave full authority, the right and power to the organized guerrillas, authorized and recognized by General MacArthur, to requisition food and supplies needed for their military operation during the period 1942 to 1944, and (3) gave full authority and power to General MacArthur to requisition arms, supplies and money, to equip, feed and pay his troops, including the recognized guerrillas called into the service of the Sixth and Eighth United States Armies in the Philippines; during the period end of 1944 to the end of the War, and that the officers under him exercised that right and power. (App. GG, p. 17c-29c.)

The entire guerrilla movement was under specific and implied orders of General MacArthur, made before he left for Australia and after he reached Australia.

The fact that General MacArthur had ordered guerrilla operations, and that General Wainwright expected them, is shown in the Brief for the Petitioner, App. 5, pp. 34b-40b. This apparently was not considered sufficient to impress respondent with its actuality. That these guerrilla operations were under General MacArthur is very clear from other documents, some of which can be identified only as "guerrilla papers".[1]

Under date of May 15, 1942, Colonel C. A. Thorp issued the following General Order No. 1:

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[1] Cannon, p. 14, Note 5.

HEADQUARTERS USAFFE LUZON GUERRILLA
ARMY FORCES

May 15, 1942

General Order
No. 1

"1. The undersigned hereby assumes the responsibility of *Commanding Officer of all U. S. Guerrilla forces in the island of Luzon* and that of personal representative of General Douglas MacArthur, for the conduct of guerrilla operations and incident affairs. *This is in accordance with verbal instructions from Gen. MacArthur on January 20, 1942.*

"2. All guerrilla leaders on the island shall derive their authority to operate from this Headquarters and shall be duly appointed by the undersigned or his representatives having such authority in writing from the Headquarters.

"3. *Any person or persons operating as guerrilla in the name of the U. S. A. without the required authority in Par. 2, supra, will be considered as enemy of the U. S. Government.*

"4. *Any person belonging to the armed forces of the U. S. Government entering into such unlawful operations shall be punishable as provided for under the articles of War of the U. S. A.*

"5. All persons guilty of looting private property, confiscating supplies or otherwise disturbing the peace of civilians unlawfully by misrepresenting themselves as a part of the Guerrilla forces of the U. S. A., will be treated as enemies of the U. S.

"6. All guerrilla units bearing proper authority to operate as such are authorized to collect arms and equipments belonging to the U. S. Government from persons unlawfully possessing such arms and equipments.

"7. All guerrilla units authorized to operate will be directly responsible thru the district and are under the command of this headquarters.

"8. Each area and District Commander receiving this order will be responsible that true copies of this order shall be distributed to all leaders.

For GENERAL MACARTHUR:

C. A. THORP
Lt. Col., U. S. A.
Guerrilla Representative USAFFE"
[Italics supplied.]

Lieutenant Colonel Thorp commanded north central, east central and south Luzon. He was captured and killed November 1, 1942, and most of the officers under him were captured and killed in 1943. Other officers took up the organization.

Major Praeger, Captain Walter Cushing, Lieutenant Colonel Guillermo Nakar, Colonels Moses and Noble and Colonel Russell W. Volkmann molded the various elements in Luzon under their command into guerrilla bands, under orders of General MacArthur. (Cannon, pp. 14-20; Pet. Br. App. S, pp. 37b-39b, 43b-47b; and App. EE, pp. 2c-12c.)

One by one, all but Colonel Volkmann disappeared in Japanese punitive expeditions from late 1942 to 1943.

Nakar surrendered in September, 1942, Cushing died in ambush, Moses and Noble surrendered June, 1943, Praeger was caught in August. In October, 1943, Colonel Volkmann assumed full command and maintained command throughout.

Lieutenant Colonel Anderson, Major Laphan and Colonel Merrill all headed guerrilla organizations which were *contemporaneously* recognized by General MacArthur, and which were later retroactively recognized by President Osmena as authorized elements of the Philippine Army, upon their screening by the Sixth and Eighth United States Armies, and inducted by General MacArthur individually or by units into USAFFE. (See (c)-The third period-*infra.*)

On Luzon were also Markings Fil-Americans, under Agustin, who received his citizenship by reason of his being in the United States armed forces as a guerrilla, (Pet. Br. pp. 21-23), Hunter's ROTC, under Miguel Ver, killed in 1942; and President Quezon's own guerrillas. (Pet. Br. App. Y, p. 67b.)

In February or March, 1943, Lieutenant Commander Charles Parsons, USN, was sent to the Philippines, on the first of his many trips, by General MacArthur. He reached Mindanao by submarine with supplies and signal equipment for Colonel Fertig. On February 13, 1943, through Parsons, General MacArthur appointed Colonel Fertig as Commanding Officer of the Tenth Military District and granted him authority to extend an intelligence net over the Ninth Military District. Similar instructions were given to Colonel Peralta, Jr., for the Sixth Military District, with intelligence coverage over the Seventh and Eighth Military Districts. (Cannon, pp. 16-21; App. EE, pp. 6c to 7c.) They received *written retroactive recognition* August 23, 1945, from General MacArthur. (Pet. Br. App. Y, p. 63b.)

These districts were all based upon the ten districts previously set up for the Philippine Army.

Major Ingeniero was recognized to be in command of the Bohol Area (App. EE, p. 10c); Major Ruffy on Mindoro. *Ruffy v. Chief of Staff*, 75 Phil. Rep. 875.

On the island of Negros, Colonel Peralta, Jr., with the implied authority of General MacArthur, appointed Colonel Salvadore Abcede in command. He was retroactively recognized in writing and by official order, on August 23, 1945. (Pet. Br. App. Y, p. 64b.)

Major Villamor was sent by General MacArthur to organize Negros and other islands, and returned to Australia at the end of 1943. (Cannon, p. 19.) (App. FF, p. 14c.)

On Leyte, Colonel Kangleon, who had escaped as a prisoner of war, took command and was subsequently made Commanding Officer of the Ninth Military District by Colonel *Fertig*. He also organized the Samar Command. He received full

recognition *contemporaneously* by General MacArthur, by being appointed Commanding Officer of the Leyte Area on November 28, 1943. (Cannon, p. 16; App. EE, p. 9c.)

Retroactively, on August 23, 1945, Kangleon was recognized as being in command of organized guerrillas, *in writing and by official order*, as of October 21, 1943. (Pet. Br. App. Y, p. 63b.)

On Cebu, Lieutenant Colonel James M. Cushing, whose brothers had organized guerrillas in northern Luzon and who had stocked ammunition which never reached Corregidor, organized a guerrilla band which was recognized by General Headquarters February 12, 1944, effective January 22, 1944. As Cebu was the most important Japanese base outside of Manila, it was the source of important intelligence information for General Headquarters.

The preparedness of Cebu for this guerrilla warfare, by Colonel Cornell and Colonel Christie, under orders of General MacArthur is well reported by Morton, pp. 502, 579-581. (App. II, p. 36c.)

The foregoing is only a short summary of the recognition of organized guerrillas under express and implied orders of General MacArthur. It fully shows, however, that General MacArthur, as Commander-in-Chief of USAFFE, authorized and ordered the guerrilla movement in the Philippines, to be undertaken at a later date, as early as January 2, 1942—*verbally*—that he recognized the organized guerrillas, who made the subject, or similar, requisitions during 1942 to 1945, some by written orders, some verbally, and some through officers under his command, as authorized officers to requisition food and supplies for their military operations in the name of the United States armed forces, and to bind the United States to pay therefor. This was war!

All other recognitions of guerrilla officers were likewise directly from General MacArthur, or indirectly through officers under his command, sent to the Philippines for the purpose, or already there.

Formal recognition of these commands carried with it three things: authority to communicate direct with General Headquarters; *authorization to issue scrip to finance guerrilla operations;* and the promise of future deliveries of supplies to the extent possible.

In the foregoing, petitioner finds express and implied authority to bind the United States during the period 1942 to 1944, as alleged in the Petition. (R. 2.)

Certainly, the authorization to issue scrip, which was done, is a promise that the United States Army will pay, or redeem the scrip, at an eventual date. This was done generally, but *not in the case of Soriano.* The authority to issue scrip, or promise to pay, was inherent. The fact that scrip was issued and some of it redeemed is clear from the record.

"They (the guerrillas) also assumed control over various phases of public activities—the allotment of food supplies, the issue of *emergency currency,* and the punishment of criminals." (Cannon, p. 50.)

"The funds available to Kangleon consisted of $50,000 in prewar currency ('only a few hundred' of which were spent by him), $225,000 in 'bogus Japanese currency' and $479,198 in *emergency currency* printed in the islands and used for 'army' purposes." (Cannon, p. 19.)

[Italics supplied.]

"General MacArthur (August 30, 1944) also established the financial policies to be followed. A new series of Philippine Treasury Certificates, called 'Victory Pesos', would be introduced in the liberated areas. The exchange rate would be two for an American dollar. All prewar currency and *all emergency currency officially determined to be bona fide* would be accepted at face value. All other Philippine or enemy currency would be worthless." (Cannon, p. 199.)

[Italics supplied.]

Thus, General MacArthur not only recognized liability of the United States for emergency currency issued by the organized guerrillas whom he had recognized, but, upon the

return of our armies to the Philippines, authorized to be issued a new money which, naturally, would be redeemed by the United States, on the basis of two pesos for a dollar, in accordance with the Rules of Land Warfare.

From the foregoing, it is very clear that General MacArthur gave express, and there naturally resulted therefrom implied, orders, that guerrilla warfare would be carried on; and that during 1942 to 1944, through emissaries and by letters and cable, he authorized named persons to take overall command of various districts in the Philippine Islands in which to organize guerrilla bands, which became known as "organized guerrillas", who had full authority to communicate with headquarters, issue scrip, and to requisition and contract for supplies in the name and for the account of the United States Army.

They were all that was left of USAFFE, all the rest of the troops having been surrendered between April and June, 1942.

There was neither time nor ability to communicate, other than by radio, or to issue orders other than those sent by Villamor and Parsons, with President Osmena in the United States, General MacArthur in Australia, and the Japanese occupying the Philippines. Nor was there any need to specifically authorize the making of requisitions for military needs under these conditions. This right was inherent.

These are the facts which support the allegations that the requisitions of petitioner made in the name of the United States Army, on the island of Negros, were made under express or implied authority of General MacArthur, in accordance with the Hague Conventions and the Rules of Land Warfare, and support the conclusion that a debt of the United States therefor was thereby created.

Petitioner urges that there is no question that, under the Hague Conventions, the Rules of Land Warfare, and the principles of international law, organized guerrillas, so recognized by General MacArthur, had the authority to

requisition supplies needed for their military operations and thereby to create a debt of the United States, and did so.

(c) *The period from the end of 1944 to 1946.*

Upon the return in October, 1944, of President Osmena and General MacArthur, it was possible to get the *paperwork* in order. First, the organized guerrillas had to be reactivated into the Philippine Army, in order to be again inducted into USAFFE under the Military Order of President Roosevelt of July 26, 1941. This was done, after screening by, and recommendations of, the Sixth and Eighth United States Armies, by order of President Osmena, in his Order No. 21 of October 28, 1944, who recognized them as authorized *elements of the Philippine Army.* Immediately, General MacArthur recognized the organized guerrillas so recognized *as authorized elements of USAFFE* and reactivated them into the armed forces of the United States, Far East, (USAFFE). "Guerrilla personnel . . . not recommended for recognition *and who do not belong to the Armed Forces of the United States*" reverted to civilian status. (App. GG, p. 25c.)

[Italics supplied.]

As Commander-in-Chief, SWPA, of which USAFFE was a branch, General MacArthur also recognized *on paper* the overall commands which he had previously recognized during their military operations in 1942 to 1945, the period during which the requisitions, the subject of this case, were involved, under date of August 23, 1945, as follows:

"GENERAL HEADQUARTERS UNITED STATES
ARMY FORCES, PACIFIC

CM/jb
APO 500
August 23, 1945

AG 370.64 (23 Aug. 45) PA
Subject: Recognition of Guerrilla Units
To: Commanding General, United States Army Forces,
Western Pacific, APO 707
Chief of Staff, Philippine Army, APO 501

"1. Guerrilla forces as indicated below were recognized by the Commander-in-Chief, SWPA, on dates shown:

Commander	Area	Date
Col. Wendell W. Fertig	10th Mil. Dist.	13 Feb. 1943
*Col. Macario Peralta	6th Mil. Dist.	13 Feb. 1943
Col. Ruperto K. Kangleon	Leyte Command	21 Oct. 1943
Col. Alejandro Suarez	Sulu Command	11 Feb. 1944
*Lt. Col. Salvador Abcede	7th Mil. Dist.	8 Jul. 1943
Lt. Col. James Cushing	Cebu Command	12 Feb. 1944
Lt. Col. Charles W. Smith	Samar Command	4 Oct. 1944
Maj. Ismael P. Ingeniero	Echol Command	21 Oct. 1943
Maj. Jose M. Ruffy	Mindoro	15 Dec. 1944
Maj. Pablo Muyco	Palawan	23 Feb. 1945
Capt. Manuel Donato	Masbate	3 Apr. 1945
Capt. Sofronio Untalan	Marinduque	15 Dec. 1944

"2. Under the provisions of Executive Order No. 21, by the President of the Commonwealth of the Philippines, dated 26 October 1944, the status of units under commanders listed above is that of members of the Philippine Army.

"By command of General MacArthur:

D. W. Dooley,
Capt., AGD,
Asst., AG."

On August 12, 1947, the date of recognition of the island of Negros, where petitioner's supplies were requisitioned, was revised to November 17, 1942. (Pet. Br. 64b; Resp. Br. 62.)

The many subsequent orders dealing with the recognition

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*Colonel Peralta, verbally appointed by Lt. Commander Parsons and then by letter by General MacArthur, in command of the Sixth Military District, with intelligence coverage over the Seventh Military District, then appointed Lt. Col. Abcede in command of the Seventh Military district, which covered the island of Negros, (App. EE, pp. 6-7). They were both retroactively recognized on paper by General MacArthur in the above order.

of individual guerrilla units by Order of General MacArthur usually contained the following language:

> "1. The following guerrilla units are recognized by the Commander-in-Chief, Southwest Pacific Area, *as authorized elements of the United States Army Forces in the Far East*, effective as of the date specified after each unit listed:
>
> [Italics supplied.]
>
> * * * * * * *
>
> "2. Under the provisions of Executive Order No. 21, by the President of the Commonwealth of the Philippines, dated 28 October, 1944, the status of members of these units is that of officers and enlisted men of the Philippine Army." (App. GG, pp. 28c-29c.)
>
> * * * * * * *

During this third period, hundreds of thousands of Filipinos sought either to join guerrilla movements or to be employed by the United States Army, or otherwise to "get on the payroll." They account for the large number of claims filed, disposed of, and pending, which will be mentioned under IV, and which have no real part in the case before this Court. In so far as this case is concerned, the statistical data only goes to show the extent to which *our Government did recognize* that the guerrillas recognized by General MacArthur were retroactively recognized as part of the Philippine Army and, as such, *inducted* into the United States Army Forces anew under the Military Order of President Roosevelt of 1941. This time (1944-1946) they were not *inducted* therein as the Philippine Army, but as elements of it, and then either individually or as units, or as forces under various commands recognized by General MacArthur in the period 1942-1944. (Pet. Br. App. Y, p. 63b, and App. GG, pp. 17c-29c.)

III

Philippine Independence—Philippine Army—Acts of Congress

The respondent, as its basic argument, having ignored what the petitioner considers the basic issue, has urged that the

"arrangements" between the United States and the Philippine Army were not such as to imply authority from the United States for the Philippine Army to bind the United States in any manner or to be part, in any sense, of the *armed forces* of the United States.

First, respondent treats of the creation of the Commonwealth of the Philippines, of its largely autonomous character after 1934, under the Philippine Independence Act, of the creation of its Army and of its eventual independence in 1946, in support of the suggestion that, from 1934 to 1946, the Philippines were quasi-independent and to be likened to a foreign country like France—and the Filipinos aliens like the French. Nothing could be further from the facts.

In Appendix HH, p. 30c, the Court will find summarized for its convenience, in parallel columns, the important sovereign powers retained by the United States for the period 1934 to 1946, as compared with the very small quantum of independence granted to the Philippines for that period.

Their true character is set forth in Footnote (1) in *Barber v. Gonzales*, 347 U. S. 638-640.*

The fact is that the United States retained virtually all sovereign powers over the Philippines until 1946, not the least of which was the power to *induct the Philippine Army*, as well as *all Filipinos* (under the act of January 6, 1918, Pet. for Writ, App. A, p. la, the Philippine Independence Act of 1934, the Philippine Constitution and Act No. 1 of the legislature of the Commonwealth of the Philippines) *into*

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* From the Spanish cession in 1898 until final independence in 1946, the Philippine Islands were American territory subject to the jurisdiction of the United States. See *Hooven & A. Co. v. Evatt*, 324 US 652, 674-676, 89 L ed 1252, 1268-1270, 65 S Ct 870. Persons born in the Philippines during this period were American nationals entitled to the protection of the United States and conversely owing permanent allegiance to the United States. They could not be excluded from this country under a general statute relating to the exclusion of "aliens". See *Gonzalez v. Williams*, 192 US 1, 12, 13, 48 L ed 317, 320, 321, 24 S Ct 177; *Toyota v. United States*, 268 US 402, 411, 69 L ed 1016, 1019, 45 S Ct 563. But, until 1946 neither could they become United States citizens. See *Toyota v. United States* (US) *supra*; 60 Stat. 416.

the armed forces of the United States to protect and defend the United States.

The United States, having the Philippine Scouts already in its armed forces, inducted the remaining Philippine armed forces, the Philippine Constabulary and the Philippine Army, into the armed forces of the United States, in 1941; but in 1945 and 1946, the United States Army inducted individuals, units and commands into our armed forces, *elements* of the Philippine Army, but *not* the Philippine Army.

The Philippine Army was originally unquestionably a separate army, organized and trained under General MacArthur as Military Advisor to the Philippine Government. At that time (1934-1941), it is true that the Philippine Army had no authority to bind the United States. As pointed out above, however, *after* the induction of the Philippine Army into USAFFE in 1941, the Philippine Army, and its officers, under the emergency conditions in the War against Japan, had just as much authority to bind the United States as had any other American officer, who was, or was not, part of the United States Army as defined by Congress. They were all part of the United States armed forces.

It is *not* claimed by petitioner, as intimated by respondent, that the Philippine Army was ever *"merged"* into, or with, the Army of the United States. It *is* claimed by petitioner, and the facts show, that General MacArthur had under his Command the United States Army, a part of the United States Navy, some United States Marines, by enlistment or induction, and the Philippine Army, by induction, all as *sections,* branches, or parts of the United States Army Forces, Far East.

That the two armies, the former Philippine Department, United States Army, and the Philippine Army, operated as separate units is not wholly true. In fact, it is far from true, according to Morton and Cannon, U. S. Army World War II, and the orders which are found in the appendices.

True, the Philippine Army had its own officers, its own insignia; its own uniform, a different scale of pay, etc., but so did the Marines and the Navy, as distinguished from the Army, and different appropriations, too. However, they were *all*, Marines, Navy units, and Philippine Army officers included, under the command of United States *Army* officers. Under King at Bataan, Wainwright at Corregidor, and under the guerrilla leaders named or recognized by General MacArthur, they were all, Marines and Filipinos included, part of one Command—the United States *Army* Forces, Far East, later United States Army Forces, Fil.

True, the Filipino soldiers were defending the Philippines, but they were also defending the United States as nationals of the United States, being nationals of, and having sworn allegiance to, the United States. While the contrary is asserted (Resp. Br. p. 25) the Philippines were still a possession of the United States. Its citizens were our nationals; they owed us allegiance, swore to it and lived up to it.

The respondent next insists that the character of the appropriations determines the status of the Philippine soldier during the period of the war. Why? No reason is given therefor. Nor is there one.

In the first place, an appropriation is not substantive legislation. Its sole function is to appropriate or set apart funds to carry out substantive legislation and obligations of the United States, whether incurred by the Executive or the Judiciary, or determined solely by Congress.

In the second place, there is no rule of any sort to guide Congress as to how it will make its appropriations other than its own rules, which it can change at will. The Constitution merely requires that Congress shall make the appropriations and, of course, they must be for the purposes of government. Congress could have included the Philippine Army in another appropriation, could have broken it down in parts, or could have done as it did, with or without reason. There is nothing whatsoever in the legis-

lative history, other than testimony asking that a separate appropriation be made and the amount required, which indicates in any way *why* Congress made separate appropriations for the Philippine Army. The appropriations most certainly did not determine the status of the Philippine Army as being or not being *in the armed forces of the United States.* They did make for much less bookkeeping on the part of the War Department of the United States. That is certain, but all.

In *USAFFE Veterans Association, Inc., v. The Treasurer of the Philippines, et als,* Civil Case No. 24277, decided January 5, 1946, the Court of first instance in Manila had occasion to consider one of the appropriations mentioned by respondent, which fund was to be disbursed by officers of the Army of the Philippines with the *approval and authority* of the Commanding General, United States Army Forces in the Far East. The litigants sought to have this fund applied to a special purpose as being Philippine money. The Court would have none of it, saying:

> "It is thus seen that even after the transfer of the USAFFE funds to the Government of the Philippines, the United States Government, through the Commanding General of the United States Army Forces in the Far East, retains supervision and control of the disbursements of the accounting of the funds, conditions which are inconsistent with relinquishment of ownership of such funds.
>
> "That the Government of the United States never intended to part with the ownership of the USAFFE funds, but merely constituted the Philippine Government its agent in paying approved claims is further shown by plaintiff's own exhibits. The numerous vouchers and other documents relative to the transfer of the funds to the Armed Forces of the Philippines have not employed 'payment' or 'pay' to describe the transfer. Advisedly, it seems 'advance of funds' under Public Law 353, 77th Congress, and 'Executive Order 9001', 'cash advance' and 'advance', are therein used."

The Court noted that, in the *Logronio* case, the Court did

not hold that the United States Government had divested itself of the ownership of the USAFFE funds in favor of the Philippine Government because the question was not before it.

Furthermore, the unexpended balance of the appropriations became part of the surplus fund of the Treasury of the United States. These funds still belonged to the United States after the appropriation and until their expenditure was approved *by* General MacArthur—representing *our* Government.

All that can be said about the appropriations is that this was nothing but an administrative matter. Congress adopted this way of paying these costs or expenses of our Government.

Respondent then treats the enormous benefits given by Congress to Filipinos who served "in the land and naval forces" of the United States, under the National Service Life Insurance Act of 1940 and the Missing Persons Act, as though these benefits were hardly worth mentioning, asserting that the statute making these laws applicable to Filipinos did not change the *status* of the Philippine Army, or the Filipino soldier, and that the laws show that Congress never intended thereby that the Philippine Army should become a part of the United States Army.

Respondent misconceives petitioner's argument. These laws do not purport to *change the status* of the Philippine Army; they *recognize the existing status*, recognize that the Philippine Army was part of the armed forces of the United States, which is a condition precedent to the enjoyment of the benefits granted by Congress. The benefits are limited to persons who served "in the land or naval forces" of the United States. The Filipinos did, and they received the benefits of the laws applicable to persons who did.

The opinion of the Attorney General (40 Op. A.G. 185), in unmistakable language, recognized this *status*, as the basis for his opinion that the Filipinos *inducted* into our armed

forces, by reason of the induction therein of the Philippine Army, were entitled to the benefits of the National Service Life Insurance Act (Pet. Br. App. BB, p. 80b) and later recognized this *status*, in order to support his opinion that Filipino soldiers, part of the Philippine Army, inducted into USAFFE, were entitled to the benefits of the Missing Persons Act.

The answer to what Congress did, and intended to do, in legislating on the subject, in 1946 and 1947, *just before* and *after* the Philippines became independent, cannot be better expressed than was done by Mr. Justice Madden, when he said in his dissent in *Logronio v. United States*, 133 F. Supp. 395:

"In the Act of Ferbruary 18, 1946, 60 Stat. 14, Congress said:

> '* * * service in the organized military forces of the Government of the Commonwealth of the Philippines, *while such forces were in the service of the armed forces of the United States* pursuant to the military order of the President of the United States dated July 26, 1941, *shall not be deemed to be or to have been* service in the military or naval forces of the United States * * * *for the purposes of any law of the United States conferring rights, privileges, or benefits upon any person by reason of* * * * (such service) * * * *except* benefits under (1) (the National Service Life Insurance Act) and (2) (laws providing for the payment of pensions on account of service-connected disability or death).'
>
> [Italics supplied.]

"By the Act of July 25, 1947, 61 Stat. 455, the benefits of of the Missing Persons Act were added to those which Philippine personnel should receive, the House Committee saying that they had been omitted from the 1946 Act by inadvertence.

"This legislation shows a clear *recognition by Congress that Philippine Army personnel were members of our armed* forces. The idea of paying National Service Life Insurance, pensions, and benefits under the Missing Persons Act to

soldiers or the widows of soldiers of our allies is absurd. Congress denied the other benefits such as payments for college education, loans for the purchase of homes or for going into business, etc., because it was not willing to extend those unusual benefits to these residents of a foreign country. Its saying that, for the purposes of the laws conferring these benefits, the service of these soldiers should not be *deemed* to have been service in the military forces of the United States was just a short-hand way of saying that they should not get the benefits. It says nothing, and was intended to say nothing, as to whether, in fact and in law, they were *in the armed forces of the United States.*

[Italics supplied.]

If these persons were not, legally and in the contemplation of Congress, *in the armed forces of the United States,* Congress wrote its law backward. Instead of saying that they *should not,* for the purposes of the laws conferring benefits which Congress did not wish to give them, *be deemed* to be in the armed forces of the United States, Congress would have said that they *should,* for the purposes of the laws conferring the benefits which Congress wished to give them, *be deemed to be in the armed forces of the United States.*"

[Italics supplied.]

Again, in the immigration cases, cited in Petitioner's Brief (pp. 21-24), the Filipino litigants held entitled to the "short-cut" method provided by Congress to achieve American citizenship, one of the greatest rewards our country can bestow, were held so entitled because, as individuals in the organized, recognized *guerrillas, they were in the armed forces of the United States.* These several laws did not change the *status* of the Philippine Army or of the Filipino soldier *vis-a-vis* the United States Army; the Filipino soldiers were accorded the benefit of these laws, because they were American nationals in the armed forces of the United States, American soldiers. They *had* the required *status.*

Nor are the benefits insignificant. It is expected that the

benefits to Filipinos under the National Service Life Insurance Act will cost over one billion dollars. What the benefits under the Missing Persons Act have cost is unknown to petitioner, but they must be respectable in amount.

There must be merit somewhere in the thesis advanced by respondent, but petitioner has been unable to find it. At most, it is only theory, and is comprised of deductions which are not supported by any authority. The authorities cited are authority only for theories advanced having noting to do with this case. The thesis of respondent is most certainly no answer to the clear conclusions which flow, and are required to follow, from the military orders of President Roosevelt, General Douglas MacArthur and officers under him, the Hague Conventions, the Rules of Land Warfare, and pertinent Acts of Congress.

The ultimate conclusion is that the Philippine Army, before the surrender of General Wainwright, in 1942, and after the return to the Philippines of General MacArthur, in 1944, and the recognized, organized guerrillas, in the interim period, were part of the armed forces of the United States in the Philippines, that they at all times had the right to requisition food and supplies for their military operations in the name of the United States Army and to thereby create a debt of the United States, for which the United States is liable, did so, and that the United States is liable to petitioner on account of such requisitions of him, in the sum of $119,765.75, as the "just compensation" guaranteed to him, as a national, now a "friendly alien" of the United States, by the Fifth Amendment to the Constitution: *Russian Volunteer Fleet Corp, v. United States*, 282 U. S. 481, 489-492.

IV

A Judicial Determination is Mandatory—a Right Not to be Denied Petitioner

In *finale*, respondent has urged that this Court be slow to depart from the view of the Executive Branch of the

Government, presumably in a "political" matter. Respondent, in effect, suggests that this Court reverse its action in granting the Petition for the Writ of Certiorari and abdicate its judicial powers.

In support thereof, there are cited cases to the effect that the American courts should not embarrass the Executive arm in its conduct of foreign affairs; that a government recognized by the President, as representative of a foreign state, will be so accepted by the courts; that a decision as to the nation which is sovereign over a piece of territory is left to the Executive; that a certificate by the State Department that a vessel is owned and operated by a foreign government will control in determining immunity from suit; and that where judicial intervention might cause difficulties in the "larger sphere of foreign relations", even the interpretation of treaties contrary to a definite position by the Executive, will not be taken.

No one would think of disagreeing with the principles laid down in the decisions cited. But what have these premises and cases to do with *this* case? None of these situations is here present. This is not a "political" case, nor has the Department of State suggested that it is by a certificate to that effect. That would be unthinkable.

What is, in fact, the position and view of the Executive?

An Army Claims Service, in the Executive branch, was set up to determine, factually, the liability of the United States for claims of Filipinos against the United States. Included within its jurisdiction, by order of General MacArthur, were claims on account of requisitions by recognized, organized guerrillas, who had promised that the United States Army would pay therefor, including the subject claim and claims exactly like it.

Thousands of such claims were filed. Many were decided favorably, i.e., on the basis of the facts.

The Executive view *then* was that such claims should be paid, if valid *in the opinion of the Army Claims Service.*

Petitioner's claim was disallowed. There was *then* no question of "diplomatic" settlement of such claims.

Under the laws of the United States, a Filipino has the right to sue the United States in the Court of Claims, upon an alleged contract breached by the United States, where the Executive branch has disallowed his claim for payment under that contract and has refused to pay. He has a right to a review by this Court, once *Certiorari* has been granted.

Petitioner maintains that his claim, unpaid to date, was based upon a *legal* obligation of the United States to pay. The Court of Claims has denied this, holding that it has no jurisdiction of the claim as a matter of law. Petitioner has asked this Court to review the decision of the Court of Claims *on the law* and to permit him to try the case *on the merits* before that Court, the War Department having declared that he has no valid claim against the United States *on the merits*. His Petition has been granted. A judicial determination would seem to be mandatory.

In 1954, the War Department (Resp. Br. pp. 63-78) asked Congress not to extend the Statute of Limitations, not to extend the time for the filing of claims against the United States, arising out of requisitions by organized guerrillas in the Philippines (Resp. Br. p. 77), pointing out that claimants had had four years within which to file claims with the United States Army Claims Service (until March 31, 1948) (Resp. Br. p. 74), and six years within which to file a suit in the Court of Claims (until September 2, 1951) (pp. 64, 75) and that the *Court of Claims* had held that it *had jurisdiction* of such claims in *Victorio v. United States*, 106 F. Supp. 182, (p. 75). It was noted that in March, 1948, alone, 150,000 such claims were filed, (p. 74). The claim of Soriano was one of them and was summarily rejected like most of the others.

Soriano filed a timely suit in the Court of Claims, but since 1954, when these representations were made, the Court of Claims has changed its position. That Court now holds

that it does not have jurisdiction. *Logronio v. United States, supra.*

Now, the Executive branch is asking this Court not to review the erroneous decision of the United States Court of Claims respecting claims filed and suits brought within the Statute of Limitations, not permit this petitioner to have his day in Court upon the merits of his claim.

Thus, the Executive represented to Congress, rightly, *at that time,* that claims had had their day in Court, but *now* that this is not true, by reason of the decision in *Logronio, supra,* wants to have this right to a day in Court denied claimants who did file timely claims.

Insofar as petitioner is aware, *until this case,* the Department of State has always taken the position that, before it will espouse a claim against a foreign country, based upon a contract, the American national making claim must first exhaust his legal remedies in the foreign country, and before the State Department will consider a claim of a foreign country against the United States, based upon a contract, the legal remedies in this country must first be exhausted. (Hackworth, Digest of International Law, Vol. V, pp. 501-3, 5, 11.)[5] The exception to the rule is where the courts are not open to the claimant. This fact is not present here. The courts are open, and this petitioner is seeking to have a legal determination by our courts before he goes to his country requesting that his claim against the United States be espoused. Is this *no longer the Executive view?* From what view is this Court asked to be "slow to depart"?

The question before the Court of Claims was—is there legal liability of the United States for this claim and others like it, and, if so, does this claimant, in fact, have a claim against the United States, evidenced by proper proof of a requisition, a delivery of the goods and a promise that the United States Army would pay, made by a recognized guer-

[5] See also Great Britain, id, Vol. VII, p. 274.

rilla in the armed forces of the United States, such that the United States is liable?

The Army Claims Service had said "No", on the merits. The Court of Claims has said that it has no jurisdiction to review the facts, because the requisitions involved did not, in law, create a debt of the United States. Petitioner has asked a review by this Court of the legal question so decided, and an opportunity to be heard by the Court of Claims on the merits, and his Petition has been granted.

The respondent now wants to determine the legal and factual questions on a "political" basis, apparently by trading claims *pros* and *cons*, not to have allowed full judicial review to which petitioner is entitled, and which for years has been a *condition precedent* to the "political" consideration of any contract claim by a foreigner against the United States, or by a national thereof against a foreign country.

There are thousands of claims pending in the Department of State between nationals of various foreign countries against the United States, and by American nationals against foreign governments, and there are many thousands of Philippine claims of all kinds that remain today unsettled. What has this fact to do with the issue presented in the subject case?

The State Department is certainly not the place to settle a contract claim against the United States *at this time*, where it is open to judicial review.

As pointed out above, there is no certificate of any sort from the Department of State to acquaint this Court with any "political" activity or power with which a judicial decision would interfere, nor any substantial reason given as to why the question involved should not be judicially determined by this Court.

The crux is perhaps found in respondent's brief, pp. 53 and 54:

> "Petitioner's claim against the Philippine Army received full administrative consideration and was found

> to be without merit (R. 3, 11, 12). If petititoner has a claim it is against the Philippine Government. If he wishes to press that claim, he may do so. If the Philippine Government wishes to honor that claim it, too, may do so. The United States has already given generously both in time and money toward assisting the Philippine Government meet all those claims relating to the expenses of the Philippine Army that appeared to have merit. As with other foreign and economic assistance, this has been handled at the intergovernmental level. Any decision to do more should be made at the same level and should take into account related claims now being considered between the two governments."

This says: "The United States has done enough for the Philippines and for the Filipinos—has passed on this claim on the merits—and even though he has the right to sue, in our courts, petitioner should be denied the right to exhaust his legal remedies, because it will cost the United States money, if he wins."

Petitioner's claim is against the United States Government and not the Philippine Army, as has been fully established by petitioner. The claim received administrative consideration by the United States Army—not the Philippine Army—and was found by the Army Claims Service to be without merit. That is petitioner's complaint and the reason he sued in the Court of Claims.

All claims between governments, at the proper level, are handled by the Executive branch, but it does not follow that, for that reason, a claimant is to be denied access to our courts, when he has the right to go there first.

The manner in which allowed claims or awards against the United States have previously been paid, or are to be paid, whether to the individual direct or to a particular government, on behalf of its nationals, is of no importance.

In the case of claims of American nationals against Germany and Austria-Hungary, and of German, Austrian, and Hungarian claims against the United States, arising out of

World War I, Mixed Claims Commissions, composed of a national of each country and of an umpire, were established, and the claims were adjudicated by these Commissions. Congress then appropriated therefor in the Settlement of War Claims Act of 1928 (45 Stat. 254).

Under that Act, our Government paid funds directly to Germany, who settled with its nationals. The German, Austrian, and Hungarian Governments paid the United States, and our Government settled with its nationals.

While these were adjudicated by Mixed Claim Commissions, rather than by the courts, the principle is no different. They were adjudicated by an impartial, international tribunal, not by the Executive branch of either Government, not by the debtor nation.

How the payment of awards to Filipinos has been, or will be, made, whether by direct payments to successful claimants or by payment to the Philippine Government for distribution, is of no importance, nor is it involved in this case.

In the subject case, there is access to our courts, and petitioner should have plenary access to them.

CONCLUSION

The United States Court of Claims had jurisdiction to hear this case, erred in refusing to do so, and this Court should review the decision below and reverse and remand it for a hearing on the merits.

Respectfully submitted,

PREW SAVOY,
203 World Center Building,
Washington 6, D. C.,
Counsel for Petitioner.

JAY PFOTENHAUER,
333 Montgomery Street,
San Francisco 4, California,
Of Counsel.